Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Revisions to Cable Television Rate Regulations	)	MB Docket No. 02-144
	)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 92-266
	)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 93-215
	)	
Adoption of a Uniform Accounting System for the Provision of Regulated Cable Service	)	CS Docket No. 94-28
	)	
Cable Pricing Flexibility	)	CS Docket No. 96-157

COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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INTRODUCTION & SUMMARY

The National Cable & Telecommunications Association ("NCTA"), by its attorneys, hereby submits its comments in the above-captioned rulemaking proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving more than 90 percent of the nation's cable customers, as well as more than 200 program networks. NCTA participated in dozens of proceedings implementing the cable television rate regulation provisions of the 1992 and 1996 Acts.

This proceeding takes a fresh look at some of those regulations. Much has changed since the FCC established its benchmark and equipment rate rules in 1993. Most significantly, as of March 1, 1999, Congress ceased rate regulation of the cable programming service ("CPS") tier. In addition, the strong, steady and irreversible growth of competition from DBS and others means that the number of systems not subject to effective competition and therefore subject to basic rate regulation will be steadily diminishing.

The Notice[1] identifies and appropriately seeks to clarify and fine-tune aspects of the FCC's basic service and equipment regulations to address certain issues that have arisen over the years. The Notice also asks whether potentially more far-reaching changes to its basic rate regulation methodology are warranted. The FCC, cable industry and LFAs have all learned to live with the existing rate regulation formulas. Certain revisions to those calculations and procedures can and should be accomplished without a major rewrite of the rules. But there is no evidence that the benefits of a dramatic shift in rate regulation methodology outweighs the significant costs that would be imposed on the FCC, LFAs and operators.

I. RATE ADJUSTMENTS WHEN CHANNELS ARE ADDED TO OR DELETED FROM THE BST

A. Basic Rate Calculations for Channels Added or Deleted During the Interim Period Should be Grandfathered

The FCC's methodology for adjusting basic tier rates to reflect changes in the number of channels offered customers has been subject to considerable confusion since the sunset of CPS

[1] Revisions to Cable Television Rate Regulations, Notice of Proposed Rulemaking and Order, MB Docket No. 02-144, MM Docket No. 92-266, MM Docket No. 93-215, CS Docket No. 94-28, CS Docket No. 96-157, 17 FCC Rcd. 11550 (2002) (hereinafter "Notice").

tier rate regulation. This uncertainty has led operators to use a variety of methods for calculating BST rates when channels are added, deleted, substituted, or moved from one tier to another.

These differing approaches stem from the lack of clarity that has surrounded the FCC's intent in including an automatic sunset to certain rules. A brief review of the FCC's changing methodologies for channel additions, deletions, and movements shows why that is the case.

The FCC in 1994 adopted its original methodology for adjusting rates for channel changes.[2] The "mark-up" method, codified in Section §76.922(e) of the rules, applied to changes in channels on both the basic and CPS tiers. The FCC modified this methodology for adding and deleting channels to the CPS tier by the "going forward" rules adopted in the Sixth Order on Reconsideration in 1995.[3] The FCC simultaneously established a new formula to reflect moving, substituting, and deleting channels from regulated tiers.[4] The new methodology, found in Section 76.922(g)(3)-(5), included calculation of a "residual" to account for channel deletions or shifts of channels from one regulated tier to another.

The problems today arise in large measure because of ambiguity contained in that Order. It stated that the "new rules for adjusting rates when channels are added, deleted or substituted on CPS tiers will be in place through December 31, 1997, and will be reviewed prior to the end of that period to determine if there is any reason to continue to increase the number of channels on any CPST."[5] The FCC also provided that the new rule would "expire on [December 31,

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2 Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd. 4119 (1994) (hereinafter "Second Order on Reconsideration").

3 Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, 10 FCC Rcd. 1226 (1994) (hereinafter "Sixth Order on Reconsideration"). Operators with single-tier systems could also avail themselves of this methodology for adding basic tier channels.

4 Id. at 1248-1255.

5 Id. at 1260.

1997] and will be replaced by our existing rule unless it is reinstated by the Commission."[6] The FCC codified this provision in Section 76.922(g)(8), which provides that "paragraph (g) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission." The FCC never took any action to review these rules or to reinstate the "going forward" rules. And through a separate order, the mark-up table contained in Section 76.922(e) was relocated to Section 76.922(g)(5).[7]

After 1997, then, a significant question remained about how to calculate rates when operators changed channel line-ups on the basic tier. The Notice itself acknowledges that the impact of Section 76.922(g)(8) has been the "subject of some debate."[8] The FCC never made clear whether the sunset of subsection (g) was intended to affect basic rate setting. Nor did it clarify whether the mark-up method (and associated per channel adjustment factor) was intended to remain post-1997, or whether operators were still required to calculate a "residual" for BST channel deletions.

Under these circumstances, it is not surprising that FCC staff has been advised informally that "operator and franchising authority practices with respect to channel deletions and channel movements have varied considerably both before and after March 31, 1999."[9] The FCC did not formally clarify its view of the appropriate method for calculating basic tier rates for channel changes until its interim order in this proceeding – issued more than three years after the automatic sunset of subsection (g).[10] But prior to the interim order, operators still were forced to

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6 Id. at 1260.

7 Thirteenth Order on Reconsideration, 11 FCC Rcd. 388 (1995).

8 Notice at ¶15.

9 Id. at ¶ 16.

10 The FCC declined to clarify whether the "mark-up method" still applied to adjusting basic rates as recently as 1999. In Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, 14 FCC Rcd

proceed with their planned additions and deletions of basic tier programming, and could not reasonably be expected to freeze channel line-ups until clarification was forthcoming.

In light of the confusion surrounding the appropriate method by which to adjust BST rates, whatever methodology the FCC adopts in this proceeding should only be applied prospectively. Existing rate calculations made in good faith during the interim period should be grandfathered.[11] As the Order Regarding Interim Adjustment for BST Channel Changes acknowledges, stability in this area is important. Indeed, for this reason the FCC already cautioned LFAs that have accepted or not questioned certain rate calculations in the interim to "not change that determination in the true-up process."[12] This interest in stability should apply equally to both channel additions and deletions. This will minimize the number of rate appeals to the FCC of LFA rate orders that challenge the methodology used by the operator. Moreover, it will minimize customer confusion by reducing the need to make subsequent changes to their rates.

B. Going Forward, the Rules Should Permit Operators to Adjust Their BST Rates Upward or Downward Based on the Same Formula

The FCC's Interim Order adopted rules for adjusting BST rates to account for changes in channels that provide for asymmetric rate adjustments. That is, an operator removing channels from the BST would be required to reduce rates by a greater amount than it would be allowed to

4653, 4668 (1999), the Commission found that "[r]einstatement of the 'Mark-up Method' of adjusting cable rates is an issue involving rate regulatory matters and therefore is beyond the scope of this streamlining proceeding."

11 The FCC has taken similar steps to grandfather reasonable actions taken prior to clarification of its policy in other instances where its rate rules created uncertainty. See, e.g., Sixth Order on Reconsideration, 10 FCC Rcd. at 1243 (allowing operators to treat certain a la carte packages as "new product tiers," even though they would not have qualified under newly established rules).

12 Notice at ¶55.

increase rates if channels were added to that tier.[13] The Commission should remove this artificial restraint on BST pricing and reinstate its original approach, which provides for parity between rate adjustments for channel additions and deletions.

This approach is reflected in the Second Order on Reconsideration.[14] There, the Commission established the "mark-up method" for "adjusting capped rates when channels are added or deleted from a regulated tier…."[15] This methodology was chosen over several alternatives based on the determination that it would provide a relatively simple way for operators to calculate rates when they added new programming services to regulated tiers. The FCC preferred this over others based on the view that it will "thus facilitate the provision of new programming services, and is not unduly burdensome on operators and regulators."[16]

This methodology for adjusting rates was temporarily superseded by use of the "residual" for channel movement between tiers – an approach to adjusting regulated rates that was understandable, given the interest in maintaining the "tier neutrality" of the original rate decision.[17] But now that CPS tier regulation has ended, tier neutrality can no longer justify use of the residual. The Commission instead should return to its earlier methodology and permit operators to increase and decrease their rates by the same amount when channels are added to or deleted from a tier.

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13 Order, MB Docket No. 02-144 (rel. Aug. 14, 2002) (requiring, for rate adjustments after the order's release date, that operators when deleting channel reduce rates by the "residual", but allowing operators that add rates to at most increase rates based on the per channel adjustment factor plus programming costs and 7.5% mark-up).

14 Second Order on Reconsideration, 9 FCC Rcd. at 4244.

15 Id. at 4244.

16 Id. at 4245.

17 Sixth Order on Reconsideration, supra, 10 FCC Rcd. at 1256-1257.

This "mark-up method" allows operators to adjust rates based on the per-channel adjustment factor found in the table in Section 76.922(g)(2). Under the rule, an operator adds the old and new total number of channels subject to regulation and divides by two, and then looks to

the table for the per channel adjustment factor. Because the CPS tier is no longer subject to regulation, the FCC should modify its rule to eliminate consideration of CPS tier channels in computing the total number of channels. In other words, an operator adding or deleting services from the basic tier should only look to the number of BST channels to determine the per-channel adjustment factor. In addition, an operator should continue to be able to factor in any increase (or decrease) in programming costs times the 7.5% mark-up for that channel.[18]

This modified methodology will protect basic-only customers from large increases in basic rates when services are added to the tier. This should alleviate the concern, expressed in paragraph 21 of the Notice, that basic service tier customers could be charged increases that reflect a residual amount calculated based on unregulated CPS tier revenues. When channels are deleted from the basic tier, basing the per channel adjustment factor only on the number of basic tier channels will provide a larger decrease for basic-only customers than if previously regulated CPS channels were also included in the calculation.

At the same time, return to the preexisting formula will avoid the artificial rate reductions caused by subtracting the "residual" for channels deleted from the basic tier. This can, in some instances, lead to absurdly low rates, particularly where a large basic tier is divided into two tiers. The presence of rate regulation in those instances can lead to rates that are artificially

[18] Where an operator had only a single-tier system and added channels pursuant to the "caps" method, any deletion of these channels should reflect the actual per-channel adjustment taken when such channels were added to the operator's channel line-ups.

depressed by regulation and unsustainable in the long run. Unduly reducing basic rates will cause harm to operators who must compete for customers with other MVPDs that are free to package and price their offerings free from any regulatory constraints.

In sum, it is unnecessary to create a new rate regulation approach through, for example, "establish[ing] new BST per-channel values through new benchmarks based on an updated comparison of BST rates charged by competitive and non-competitive systems…."[19] A decade of experience in rate regulation need not be discarded in order to perfect a new rate regulation approach for added or deleted channels. The Commission should merely fine-tune the approach already incorporated in its rules as described above and allow operators to adjust BST rates by the same amount when channels are added to or deleted from that tier.

C. All Cable Systems, Including Single Tier Systems, Should be Permitted to Adjust Rates For Channel Additions During the Middle of An Annual Rate Cycle

The rules currently offer more flexibility to single tier systems than to other systems to adjust rates to account for channel additions. Single tier systems are permitted to make an additional rate adjustment to reflect channel additions to the BST, while other systems that file annually are not, absent special circumstances.[20] The Notice asks whether to retain this option for single tier systems.[21]

Not only should the FCC maintain this approach for single tier systems; it should also extend this flexibility to all cable systems for channel additions made during the year, regardless

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[19] Notice at ¶22

[20] Id. at ¶23. Section 76.922(e)(iii)(c) permits operators with single tier systems to make one additional rate adjustment during the year to reflect channel additions to the basic service tier. Operators that use the annual method for adjusting rates may adjust rates mid-term for channels required by local or federal law to be added to the basic tier, such as must carry, PEG and leased access channels. 47 C.F.R. §76.922(e)(iii)(B).

[21] Notice at ¶23.

of how many tiers they might have. As a matter of customer relations, operators desire to minimize the number of rate changes during the year. But there are circumstances that may require such adjustments.

For example, operators may reach agreement to carry digital broadcast signals pursuant to retransmission consent. Mid-year rate adjustments to account for these BST additions would not be covered by the existing rule. But there appears to be little reason to artificially force operators to wait until their annual rate filing date to add these signals, or to forgo recovery of needed revenues while these new channels are carried and occupy system capacity. Instead, to facilitate the roll-out of digital broadcast services, the Commission should provide all operators additional flexibility to account for voluntary basic tier channel changes by allowing an additional mid-year change to basic tier rates.

II. DIGITAL BROADCAST TELEVISION RATE ADJUSTMENTS

The Notice asks commenters to update the record to address rate adjustments for carrying digital broadcast signals on a rate regulated basic tier. Cable operators can incur significant costs, over and above those ordinarily incurred when making basic tier line-up changes, when adding digital signals to a cable system. The Digital Must Carry Order describes the various costs associated with these additions, including costs incurred at the cable systems' headend and at other points leading up to the customer's home.[22] Thus, in addition to the per-channel adjustments described above, the FCC's rate regulations should provide a relatively simple mechanism for recovering these costs.

We agree with the Commission's decision to allow operators to recoup those costs through pass-through of headend equipment costs necessary for carriage of DTV signals as an external cost or through an add-on surcharge based on the Form 1235's network upgrade surcharge, but not both.[23] These extraordinary headend and upgrade costs necessitated by adding the capability to carry broadcasters' digital signals are not captured in the per-channel adjustment factor table or by any other channel addition factors.

The Notice suggests that operators could recover for each 6 MHz used to add digital signals to the basic tier. But the permissible rate adjustment should not be tied to the amount of cable capacity that the digital broadcast signal occupies.[24] The rate rules have always been based on channels, not bandwidth, and the Commission should not impose such a limit now. Cable's ability to compress more than one digital channel into each 6 MHz is irrelevant to the value for customers receiving the service. It should also be irrelevant for purposes of the rate rules.

The Notice also suggests that the Commission's policy goal is to provide "sufficient incentives to add digital television signals, particularly during the transition from analog to digital service…."[25] But a bandwidth-based calculation would not accomplish that goal. Adopting a rate approach for digital signals different than for analog signals would artificially skew operators' incentives against using basic tier capacity for digital services. It would effectively reduce the channel addition rates by half or more, depending on the compression method an operator uses. Thus, the Commission should allow operators to increase rates for

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22 Carriage of Digital Television Broadcast Signals, 16 FCC Rcd. 2598, 2645 (2001) (hereinafter "Digital Must Carry Order").

23 Notice at ¶26. The Notice also inquires into the ability to use existing forms to make adjustments. The Commission should modify the instructions to Worksheet 6 on the Form 1240 to allow all systems, not just small systems, to benefit from the network upgrade surcharge.

24 See id. (suggesting that operators are allowed increases for each 6 MHz of capacity devoted to digital broadcast signal carriage.)

25 Id.

each digital channel added pursuant to the approach described in Part I above, plus the upgrade surcharge or external cost adjustments to reflect digital headend equipment.

Finally, the Commission should clarify that when operators add digital signals to the basic tier, they may increase rates for all basic subscribers, not just those that take the digital broadcast signals.[26] Digital broadcast signals carried on the basic tier are available to all basic tier customers who choose to buy a digital television set or obtain the equipment needed to view digital broadcast signals. These signals still occupy capacity and operators still incur costs, regardless of how many customers choose to get that equipment.

Carriage of digital signals thus differs from an upgrade that is being rolled out in stages to a community. It makes sense to limit the upgrade surcharge in the latter case to those who can actually receive the benefit of that investment. But in the case of basic tier digital signal carriage, all cable customers can receive those digital signals if they so choose. In this respect, a non-digital customer resembles an analog customer who is unable to receive all the broadcast signals on a basic tier without obtaining a converter box, but who chooses not to take that box. The analog customer in that situation is not entitled to a lower basic tier rate than his neighbor with a cable-ready television set or converter box. The FCC should thus clarify that if digital broadcast signals are carried on the basic tier, all customers' basic tier rates may reflect that carriage.

III. INITIAL REGULATED RATES

Nearly a decade has passed since local franchising authorities were provided the opportunity to obtain certification to regulate basic service tier rates. For a variety of reasons, not every LFA has chosen to do so. Nevertheless, existing FCC rules provide an LFA the opportunity to require operators to justify rates going back to 1992 to determine whether rates in 2002 are correct. As time has passed, this has obviously become an increasingly burdensome obligation. This is particularly the case if ownership of the system has changed over the decade. Obtaining the information necessary to justify rates charged in 1992, and subsequent rate increases, is a significant challenge.

The Notice appropriately asks whether a less burdensome approach is warranted.[27] We agree that the Commission's rules should adopt reasonable limits on LFAs' ability to require justification for rates charged long ago. Instead, operators should be permitted to maintain their prevailing rate once LFAs are newly-certified.

FCC precedent supports this approach. For example, the FCC recently determined that in cases of LFA recertification, operators are "permitted to maintain the rates that prevailed while subject to effective competition and subsequent rate increases shall be subject to generally applicable regulations governing increases."[28] The Commission adopted a similar approach to avoid the so-called "all rates in play" problem that had plagued its own review of CPS tier rates. The agency explained that "subscribers and franchising authorities have had ample opportunity to file a complaint that would result in Commission review of operators' entire rate structure. It has been nearly two years since subscribers and franchising authorities first had the opportunity to complain about their CPST rates. … We believe that if subscribers and the franchising authority have not filed a CPST rate complaint, it indicates a level of satisfaction with their

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26 See Digital Must Carry Order, 16 FCC Rcd. at 2647 (suggesting that upgrade surcharge may only apply to those that purchased digital programming).

27 Notice at ¶27.

28 Connecticut Department of Public Utility Control: Petition for Recertification of Rate Regulation Authority, DA 02-2693 (rel. Oct. 17, 2002) (hereinafter "Connecticut DPUC Order").

current rates that would not exist if they believed CPST rates were unreasonable."[29] The FCC has treated similarly small operators' rates that lose their eligibility for small operator treatment.[30]

The same logic applies here. LFAs have had ample opportunity to regulate basic tier rates or even to have the FCC step in to do so under particular circumstances.[31] Presumably, if LFAs had believed basic rates needed to be regulated over that time, they would have availed themselves of these options. Those local authorities that declined to act for a decade should be estopped from claiming that they would be prejudiced by limiting their review of previously-charged rates. Operators' basic tier rates that have not been reviewed to date should be deemed to be presumptively reasonable.[32]

To provide protection against unreasonable basic tier rates, LFAs that become certified for the first time should be permitted to review the last rate increase taken by the system to ensure that it conforms with the FCC's rules. This will ensure that operators are not in a position where they can dramatically increase rates to levels that exceed those that would have been permissible under the FCC's rules with impunity simply because it is apparent that an LFA will soon be able to initiate basic tier rate regulation.[33]

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29 Thirteenth Order on Reconsideration, 11 FCC Rcd. 388, 451-452 (1995).

30 Implementation of Cable Act Reform Provision of the Telecommunications Act of 1996, 14 FCC Rcd. 5296, 5334-35 (1999).

31 47 C.F.R. § 76.913.

32 The FCC should adopt the same approach for small systems using Form 1230. Those systems may charge the Form 1230 rate until that rate "catches up" to that which could have been charged using Forms 1200, 1210, and 1240. The FCC should eliminate the need for all systems, regardless of size, to go back to recalculate rate forms in order to justify rates charged today. Instead, it should extend the "prevailing rate" principle to all systems to avoid such a burdensome result.

33 See, e.g., Connecticut DPUC Order supra (cautioning against raising rates dramatically to protect those rates from regulatory review where apparent that operator will lose deregulated status.)

IV. UNIFORM RATE STRUCTURES AND REGIONAL RATE

The Commission previously acknowledged that inter-franchise rate uniformity provided numerous benefits, both to operators and consumers.[34] Rate uniformity throughout a region facilitates a cable operator's ability to promote its services on a regional basis, enables consumers
to make a better comparison of service packages offered by competitors, leads to improvements in customer service, and "reduce[s] subscriber confusion of those who move from one part of the service area to another and currently must pay a different amount for the same level of cable service, even if the service is provided by the same cable operator."[35]

The Commission attempted to liberalize its rate rules to facilitate operators' ability to charge uniform rates, both system-wide and throughout a region. But those changes do not go far enough. The ability to fully exploit these efficiencies has been affected by the artifacts of rate regulation and the power of local authorities within each discrete franchise area to review rate changes.

Current FCC policy gives LFAs the right to insist on franchise-specific filings even when all relevant factors, including program service and equipment rates, channel line-ups and franchise fees, are identical.[36] This policy serves no continuing purpose. Operators should have the option of filing system-wide rate submissions in such circumstances as a matter of right. The current FCC policy, which allows LFAs to object to such filings, needlessly impedes accomplishing the FCC's goal of flexibility in this area and imposes unnecessary regulatory costs.

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[34] Uniform Rate-Setting Methodology, 12 FCC Rcd. 3425, 3429 (1997).

[35] Id.

FCC rules also permit operators to establish rate uniformity in a region, but provide disincentives to doing so. Basic service tier rates throughout the entire area for which rates are to be uniform must be based on the lowest BST rate that would be established under rate regulations.[37] This requirement can deter uniform rates, since rate uniformity means losing revenues from the basic tier.

The Commission should liberalize these rules as well. Where an operator provides customers the same number of channels (except for PEG or broadcast channels) and itemizes franchise fees, the operators should have the option of calculating the basic service tier rates at a uniform level. This could be accomplished by permitting operators to use a weighted average basic revenue across its systems. This methodology would permit uniformity without providing a windfall to the operator. It would also more accurately reflect the price, overall, being paid by consumers in the region.

V. COMMERCIAL RATES

More than eight years ago, the Commission received comments as to why the Act does not permit rate regulation of charges to commercial establishments, and why the FCC's benchmark formulas do not and should not apply to those businesses. The Notice asks parties to update the record.

In its earlier comments, NCTA demonstrated that as a matter of law, Section 623 does not cover commercial rates.[38] Nothing in the Cable Act or its legislative history supports the conclusion that Congress was concerned with cable operators' charges to commercial customers.

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36 See Questions and Answers on Cable Television Rate Regulation, June 1, 1994 (Question 4, page 3).

37 Id. at 3432.

38 Comments of the National Cable Television Association on the Fifth Notice of Proposed Rulemaking (filed June 29, 1994).

Nor does the language of the Act cover these establishments. Neither the definition of "effective competition," which focuses on service to "households," nor the definition of "subscribers," which contemplates a "member of the general public," encompasses commercial establishments.[39]

NCTA also pointed out that there are many legitimate reasons why the FCC should not regulate commercial rates. There are a variety of reasons why commercial and residential accounts simply are different types of customers. For example, unlike residential subscribers, commercial establishments may derive a financial benefit from providing cable service to their customers. Moreover, particularly where operators serve sports bars and similar businesses, programmers may charge operators higher fees to reflect the benefits that bars and restaurants receive from exhibiting cable programming. Commercial customers, due to the nature of their businesses, may have customized needs for service. These specialized needs may increase an operator's costs of providing service to this class of customers. Also, different companies may provide pay-per-view-programming, and operators have been held liable if they inadvertently sell pay-per-view programming to these establishments. This liability raises the cost of doing business.[40]

Finally, the record showed that commercial establishments routinely have a variety of competitors from which to obtain video programming. That competition has only intensified over the ensuing eight years. DBS providers have made significant in-roads serving these customers. DirecTV, which competes not only on price but in terms of their exclusive sports

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[39] NCTA's Comments also demonstrated that even if the Act could be read to cover charges to non-residential customers, the FCC's benchmark rate formula could not be applied to commercial rates since the survey on which it was based likely did not include such charges. See id. at 17-18.

[40] See National Satellite Sports, Inc. v. Eliadis, Inc., 253 F. 3d. 900 (6th Cir. 2001).

product, served more than 380,000 commercial accounts as of the end of third quarter 2002.[41] EchoStar also offers customized packages for "commercial public/private" accounts.[42] A variety of other providers focus on servicing this segment of a community, even if they may choose not to serve residential customers.[43] These competitors can package their offerings and charge prices totally free from rate regulation.

Even if the Commission disagrees with our reading of the statute, there is no need to rate regulate in this area. We agree with the Notice's suggestion that market forces suffice to ensure that rates to commercial establishments are reasonable in the absence of direct regulation.[44] For all these reasons, the Commission once and for all should announce that commercial rates are unregulated.

VI. COST-OF-SERVICE RATE PROCESS AND ABBREVIATED COST-OF-SERVICE SHOWINGS

The Notice asks whether, given the end of CPS tier regulation, its rules should still provide operators with the option of making a cost-of-service showing. Cost-of-service is a "very information and labor intensive mechanism for establishing rates,"[45] as the Notice explains.

No doubt the costs and burdens of making a cost-of-service showing are reasons that the overwhelming majority of cable operators establish rates using the benchmark rate

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41 Selected DirecTV U.S. Financial Highlights, as of 9/30/2002.

42 http://commercial.dishnetowrk.com/content/public_private/index.shtml

43 For example, LodgeNet and TVN exclusively serve hotels and other commercial establishments.

44 Notice at ¶ 30.

45 Notice at ¶34.

methodology.[46] Nevertheless, cost-of-service remains useful as a limited "safety valve," notwithstanding CPS rate deregulation. For example, some cable systems have only a single basic tier and cannot use CPS rates to subsidize basic rates that would otherwise be considered confiscatory. But even those systems with CPS tiers cannot necessarily use those tiers to absorb costs that properly should be assigned to basic tier customers. All systems face competition, which means the Notice's unstated assumption that CPS rates can easily subsidize BST rates may not hold true. Moreover, as the Notice recognizes, principles developed as part of the cost-of-service rules still constitute an integral part of calculations governing equipment and installation rates.[47]

Furthermore, there remains a need for the abbreviated cost-of-service showing on Form 1235. The Commission is aware that many cable systems have undertaken significant upgrades since the benchmark rates were established.[48] The benchmark and price cap schemes for operators of any size do not reflect these costs. Thus, the ability to make an abbreviated cost-of-service showing through a Form 1235 remains relevant and necessary to ensure that the rules provide a means to recover basic customers' appropriate share of network upgrade costs.

VII. RATES OF INTEREST

The FCC established a rate of interest of 11.25 percent. The Notice asks whether that rate is still appropriate, or whether some different indicator should be used.[49]

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46 See Time Warner Entertainment Co., L.P. v. FCC, 56 F.3d 151, 170 (D.C. Cir. 1995) ("[B]ecause a cost-of-service regulatory proceeding is expensive for the cable operator,… the FCC can be confident that an operator will not lightly choose that option and it will indeed remain a limited exception to the general rule.")

47 Notice at ¶35.

48 The FCC recently reaffirmed the need for Form 1235 abbreviated cost-of-service showings to cover the costs associated with providing digital signals to basic tier customers. Digital Must Carry Order, 16 FCC Rcd at 2646-47.

49 Notice at ¶38.

The 11.25 percent interest rate is used to calculate over- and under-payments pursuant to the annual rate adjustment filing.[50] The Commission reasoned that "because we have already determined that 11.25% is presumptively the cable operator's cost of capital, we find that the interest rate presumptively should be 11.25%."[51]

This rate has not changed since the FCC adopted the annual rate adjustment methodology in 1995. But the Notice provides no reason to change it now. Stability and regulatory certainty should override whatever impulse there might be to recalibrate the rules to respond to changed circumstances on an on-going basis.

In any event, the Notice fails to identify how circumstances have changed. Cable operators' cost of capital – upon which the 11.25 percent rate is based – continues to fall within this range.[52] Kagan World Media, for example, estimates that cable's average cost of capital today is approximately 11.8 percent.[53] The Commission thus should maintain its 11.25 rate for use in connection with annual rate true-ups.

VIII. REFUNDS

The Notice asks whether it should update rules governing refunds for rates paid in excess of maximum permitted rates.[54] Experience gained over the decade of basic rate regulation suggests that the Commission should provide operators with additional flexibility for implementing refunds.

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[50] Thirteenth Order on Reconsideration, 11 FCC Rcd. 388, 421 (1995).

[51] Id.

[52] The FCC still maintains an 11.25 percent rate of return for interstate common carriers subject to rate-of-return regulation. See Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd. 7507(1990); Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate Carriers, 16 FCC Rcd. 19613, 19701 (2001) (terminating prescription proceedings on authorized rate of return).

[53] Kagan World Media estimate (Oct. 2002).

Existing rules limit an operator to two choices. Operators may either return with interest overcharges to those subscribers who actually paid them, through direct payment or as a "specifically identified credit to those subscribers' bills;" or they may provide a future one-time credit to the appropriate group of current subscribers.[55] The FCC should make available other reasonable alternatives.

For example, the rules should not limit operators to a one-time credit. Instead, they should allow installment refunds over a reasonable period of time or use of in-kind refunds. Adding this flexibility would alleviate hardships to operators that a one-time credit may cause. Installment refunds have been accepted by the Commission in the context of social contracts and rate settlements, as have in-kind refunds so long as the coupons represent a value equal to or greater than a cash refund.[56] The rules should permit all operators to avail themselves of these alternatives.

IX. RE-EVALUATION OF THE BST RATE REGULATION PROCESS

The Notice's "primary focus … is intended to be on improvements within [the] existing regulatory scheme."[57] However, the Notice solicits comments on whether to go back to the drawing board and rework cable basic rate regulation by either recalculating the competitive differential or establishing an entirely new methodology for regulating basic rates.[58] Fortunately, the Notice also recognizes the difficulties that such an approach would cause for all concerned – cable operators, local franchising authorities, and the Commission: "Although the elimination of

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[54] Notice at ¶41.

[55] 47 C.F.R. §76.942(d).

[56] See, e.g., Social Contract for Continental Cablevision, 11 FCC Rcd. 11,118 (1996); Cablevision Industries, 11 FCC Rcd. 7341 (1996) (permitting installment refunds over limited time period); Social Contract for Continental Cablevision, 10 FCC Rcd 12651 (1995) (authorizing in-kind refunds).

[57] Notice at ¶6.

CPST rate regulation along with the associated concept of tier neutral regulatory process changes one of the predicates for the rules, this structure has come to be understood by both operators and local governments involved in the rate regulation process. There would be considerable regulatory cost involved in changing to an entirely new basic tier rate setting process."[59] We agree that whatever benefits there might be to redrawing basic rate regulation would be far outweighed by the costs.

Even a cursory examination of the lengthy history of the rate rules shows why. The Notice lists the nineteen orders, including fourteen orders on reconsideration, issued since 1993.[60] More than two thousand sets of comments relating just to the benchmark rate regulation system were filed in response to these notices.[61] The FCC issued numerous interpretive clarifications in the form of Questions and Answers and informal letter rulings, and adjudicated several hundred appeals from local rate regulation orders. Countless man hours have been spent mastering and implementing the details of the existing methodology.

The Notice provides no reason to believe that any new approach would be simpler to establish or, at this stage, easier to administer. The fourteen reconsideration orders and thousands of comments were all necessary to establish and fine-tune the current rate regulation approach to deal with the myriad differing fact patterns arising from applying rate regulation to a complicated and diverse industry.[62] Experience shows that any new methodology for regulating rates will invariably lead to its own set of unanticipated problems and questions.

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58 Id. at ¶42-43.

59 Id. at ¶6. (emphasis supplied.)

60 Id. at ¶2 n.8.

61 The FCC's Electronic Comment Filing System lists over 2200 records in Docket 92-266.

62 Notice at ¶2 n. 8.

Regulatory stability and certainty strongly militate in favor of maintaining the existing rate methodology. The rate review process has become more routine as FCC guidance on particular issues has developed through reconsideration orders and on appeals. And disputes over basic tier rate increases have abated since CPS tier rates have been deregulated and operators have forgone basic adjustments. Any newly launched FCC effort to recalibrate basic tier rates would throw this hard earned stability into serious question.

Such a significant undertaking to refine cable basic tier rate regulation at this point would also inflict even more competitive harm on cable. While operators must seek permission from certified local authorities before making any rate changes – higher or lower – their unregulated competitors are free to use this lop-sided regulatory approach to their advantage.[63] Resources that could be better spent competing to satisfy consumer demand would be needlessly diverted to mastering and implementing new regulatory schemes.

In short, the FCC's years of experience in regulating rates demonstrate the difficulty of establishing an appropriate methodology for determining cable rates. Rather than embarking on a new undertaking to try to finely calibrate basic tier rates, the Commission should recognize that its rate rules have accomplished their goal of establishing reasonable rates and should maintain its basic methodology. The goal, we submit, should be to minimize regulatory interference in the rate area, not to devote limited resources to reinventing the wheel.

[63] Given pervasive basic tier regulation since 1993, and the competitive pressure that cable operators face, it is unsurprising that there is no evidence in the Notice that basic rates are too high. The most recent annual price survey saw basic rates rise by a mere 2.1 percent from July 1, 2000 to July 1, 2001. In fact, BST rate increases for systems subject to effective competition rose 4%, while regulated systems' rates increased by only half as much – 2%. Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment (rel. Apr. 4, 2002) at ¶21, Tables 4 and 5.

X. EQUIPMENT AND INSIDE WIRING RATE REGULATION

The Notice seeks comment on a variety of issues relating to equipment regulation. When first implementing the 1992 Act, the FCC took an expansive view of its responsibility in this area. It swept within the "actual cost" regulatory standard a wide variety of equipment used to receive not only basic service, but virtually all cable service. The Notice properly proposes to give this approach a fresh look.

The initial rate order concluded that "[C]ongress intended the actual cost standard to apply broadly to all equipment used to receive basic tier service."[64] The Commission explained that "[C]ongress included equipment and installation in the definition of cable programming services to prevent cable operators from avoiding regulation of equipment, if any, used to provide cable programming services alone or in conjunction with unregulated services."[65] Thus, the Commission determined that all equipment through which basic tier signals passed – essentially all equipment at that time – should be regulated at actual cost.[66]

Since then, much about rate regulation has changed. The Notice suggests two changes may warrant a new view of the breadth of equipment price regulation – the introduction of digital tiers of service and the 1996 Act's commercial availability provision. Another significant change is the end of CPS tier rate regulation. It makes little sense to require the continued rate regulation of equipment used primarily to access non-basic digital tiers, even if basic signals go through those converter boxes, now that those tiers are unregulated. The underlying premise of

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64 Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, 8 FCC Rcd. 5631, 5906 (1993) (hereinafter "1992 Act Report and Order").

65 Id. at 5807.

66 Id. at 5805.

protecting CPS customers from unregulated equipment costs has vanished with the end of CPS tier price regulation.

To be sure, the Commission's initial broad determination was upheld by the Court of Appeals.[67] But the court acknowledged that Congress had not dictated this outcome.[68] It based its decision simply on the FCC "having offered a permissible interpretation of the statute…." Now that the statute has changed to eliminate CPS tier regulation, the FCC should rethink its interpretation. It should deregulate equipment, like converter boxes, that are used primarily to access non-basic services, and limit regulation to equipment destined for basic-only service.

Even if the FCC feels constrained to continue to regulate boxes used to access analog tiers of service, it should provide operators the option of pricing digital boxes free from actual cost regulation. As the Notice explains, this equipment "involves investments very largely used to receive CPST or other unregulated services…"[69] Thus, mandatory LFA review of these rates on an annual basis introduces an additional layer of regulatory oversight unnecessary to protect basic rate payers.

LFA involvement may continue to be appropriate where operators aggregate digital boxes with other boxes subject to rate regulation. The equipment aggregation provision, adopted in the 1996 Act, allows operators "pursuant to any rules promulgated under [Section 623(b)(3)], to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category."[70]

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67 Time Warner Entertainment Co. v. FCC, 56 F.3d 151 (D.C. Cir. 1995).

68 Id. at 178 ("Obviously, Congress did not address the specific issue before us.")

69 Notice at ¶47.

70 47 U.S.C. §543(b)(7)(A). Operators may not aggregate equipment used by basic-only customers.

Equipment aggregation continues to serve an important purpose of facilitating roll-out of digital boxes. Where operators are availing themselves of this option, those digital boxes that are included in the pool from which aggregated converter prices are derived should maintain their rate regulated basis. This will ensure that operators cannot increase their digital box rate to levels above what the regulated rate would yield and recover those rates by imposing higher charges on other types of regulated converter boxes. Where operators do not include those digital boxes to derive an aggregated equipment rate, however, they should be free to set prices at market-driven levels for these optional pieces of equipment.

Operators are also developing other types of devices only tangentially related to basic service. For example, customers will be able to obtain advanced services, such as home networking, to view programming on a variety of devices in their home without the need for converter boxes on each of those devices. The Commission should make clear LFAs should play no role in regulating the rates that can be charged for these types of advanced services. Such a deregulatory approach is entirely consistent with the FCC's previous determination to leave to competitive forces certain cable offerings. For example, the FCC previously found that a "whole house" maintenance plan is not subject to regulation by the FCC or LFAs.[71] The Cable Services Bureau determined that cable operators competed with local telephone companies for the provision of these types of wire maintenance plans, and regulation was unwarranted for this offering.[72] Operators will face similar competition from unregulated entities – such as consumer electronics manufacturers or wireless providers – in offering home networking. Pricing for these

[71] Memorandum Opinion and Order, 16 FCC Rcd. 2198, 2201 (CSB 2001).

[72] Id.

types of competitive offerings should be determined in the marketplace and not be subject to oversight by thousands of local franchising authorities.

XI. RECOVERY OF LOST REVENUES FOR EQUIPMENT AND INSTALLATION

The Notice recognizes that existing rules may unfairly deny operators recovery of revenues lost or refunds paid pursuant to an erroneous rate order. In particular, local authorities may mistakenly disallow certain rate increases associated with equipment or installation.

Currently, if these errors were made with respect to service rates, an operator would be allowed to true-up its next year's rates (on a Form 1240) to recover the undercharge. The Commission is right to propose extending this policy to erroneous equipment rate orders, but its proposed approach – i.e., identifying undercharges as expenses on Schedule B of Form 1205 – will not work to ensure recovery of the full amount to which an operator is entitled. Only a portion of amounts entered as expenses on Schedule B are ultimately entered on Form 1205 and recovered by operators through increases to the permissible equipment and installation charges.

The best solution is to allow operators to recover the full amount of any undercharges through a temporary adjustment to basic rates. A simple adjustment to rates, whether implemented as a one-time charge or allocated (with interest) over a fixed period, is the best and least complicated way to make operators whole.

XII. CHARGES FOR CHANGES IN SERVICE TIERS

FCC rules limit the charges for customer changes in any service tiers or equipment.[73] The Notice asks what effect the end of CPS tier regulation has on this rule.[74]

Section 623(b)(5)(c) provides for rate regulation of service changes between regulated service or equipment. Since only basic tiers remain regulated, this rule has no continuing relevance to service tier changes. A corollary to the right to price CPS tiers based on marketplace factors should be the right to set charges for changing that level of service free from LFA oversight. If a different piece of equipment is needed to receive the new level of service, then the truck roll to deliver that equipment will remain regulated under the existing rate rules. But there remains no justification for continuing to interfere with the marketplace prices for tier changes when all those service changes relate to either upgrading or downgrading service from and within unregulated CPS tiers.

Thus, the FCC should eliminate regulation of tier change charges, which have essentially been capped at a presumptively nominal charge of $2.00 for computer-coded changes. It should also make clear that local franchising authorities and states may not regulate charges in this area. This policy is consistent with the FCC's earlier action preempting state laws that conflict with the Commission's rules governing service change charges.[75]

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[73] 47 C.F.R. §76.980 (generally limiting charges for computer-activated changes to a "nominal amount" not to exceed actually cost, or based on actual cost for changes that require more than a coded entry.)

[74] Notice at ¶ 51.

[75] See 1992 Act Report and Order, 8 FCC Rcd. at 5833 n.793 ("We believe that any state laws that prohibit charges for changing service tier would be preempted to the extent that they conflict with Commission rules implementing Section 623(b)(5)(C), which requires cost-based charges for changing service tiers.")

XIII. CHANGING THE EFFECTIVE COMPETITION PRESUMPTION

FCC rules presume that cable operators do not face effective competition. Operators bear the burden of proving the presence of sufficient competition to justify rate deregulation. This rule and presumption were adopted when "no 'competitive' DBS system [was] operational"[76] and the "vast majority of cable systems … [were] not subject to effective competition."[77] In 1993, the Commission worried that it might be overwhelmed with the task of showing that cable systems did not face effective competition when it was fairly sure that the test could not be met in most cases.[78] Also at that time, the FCC was at the very beginning of cable rate regulation, and was concerned that applying the test to each system prior to regulating rates could result in undue delay and strain resources.[79]

That was then, and now the Notice recognizes much has changed. Last year's Competition Report observed that DBS penetration "now exceeds 20% of television households in 30 states and 30% in five states."[80] That trend continues. NCTA's Comments filed in connection with the latest Competition Report Notice demonstrate that DBS penetration exceeds 15 percent in 44 states; 20 percent in 36 states; 25 percent in 22 states; 30 percent in 7 states; and even 40 percent in one state.[81]

Under these circumstances, there no longer is any basis for the current rebuttable presumption that cable operators do not face effective competition. To the contrary, it makes more sense to presume the opposite. At least in those states where DBS penetration exceeds 15

[76] Id. at 5660.

[77] Id. at 5670.

[78] Id. at 5669-5670.

[79] Id. at 5670.

[80] Notice at ¶53.

percent, it is reasonable to shift the presumption. Where a cable operator has not been regulated or seeks to be deregulated on the ground that it is subject to effective competition, the burden should be on the LFA to demonstrate that effective competition does not exist, using the same data and resources currently available to cable operators seeking to demonstrate that they are subject to effective competition.

It does not, of course, follow from the fact that statewide DBS penetration exceeds 15 percent that penetration exceeds 15 percent in every community. There may be states in which DBS penetration is especially high in some areas and low in others, and there would be no reason for a cable operator to seek to be deregulated in a community where penetration of DBS and other competing MVPDs is obviously below 15 percent. State specific petitions would be filed by the operator listing franchise areas where the operator believes the presumption applies. The LFA would then have the right to rebut the presumption. The general burden of proof and the presumption established in the Commission's rules should reflect the best prediction of the actual facts. And given that DBS penetration exceeds 20 percent nationwide, it makes the most sense to rely on statewide penetration as the best prediction of penetration throughout a state, and to establish a rebuttable presumption on that basis.

In addition to changing the presumption, the presence of strong MVPD competition throughout the nation justifies modifying the effective competition showing. The FCC can safely streamline and expedite the processing of effective competition petitions, as described below.

First, the FCC should eliminate certain elements of an effective competition showing that are no longer subject to dispute. Cable operators should no longer be required to demonstrate

[81] NCTA Comments, Video Competition Report at 13 (filed July 29, 2002).

consumer awareness of competitive DBS offerings in their franchise area. DBS is a nationwide service and engages in significant, sustained marketing to convince cable customers to switch multichannel providers. It is safe to assume, given DBS advertisements in national newspapers, as well as in television, radio, Internet, direct mail, Sunday papers, billboard and telemarketing campaigns, that consumers in towns large and small fully recognize DBS as a competitive alternative to their local cable operator.

Moreover, it is by now well settled that DBS offers comparable programming to cable. The Commission should take official notice of this established fact and eliminate the requirement that operators provide channel line-ups as part of the petition. Further, there should be no need to show that DBS is physically able to deliver service to potential customers or that there are "no regulatory technical or other impediments to households taking service…" from DBS providers.[82]

Thus, the only remaining showing is whether DBS serves the requisite 15 percent of customers threshold. As for that showing, several modifications are in order.

One continuing difficulty has been an operator's ability to obtain accurate subscriber numbers on a timely basis from its competitors. The FCC should reiterate that competitors, including DBS, must provide a timely response to an operator's request for homes passed and subscriber information. Failure to respond within the 15-day deadline should result in fines for each day of delay. Moreover, the information provided must reflect both service to single family homes plus the total number of individual units in a multiple dwelling unit, regardless of whether they are individually or bulk billed.[83]

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[82] 47 C.F.R. § 76.905(e).

[83] Section 623(1)(l)(b)(ii) requires a showing that the combined penetration of all MVPDs "other than the largest" exceeds 15 percent. In the case of multiple competitors submitting aggregated data, it may be impossible to

Another problem concerns identifying zip codes in a manner that corresponds to the franchise area. The Commission should permit operators to use several different methods (e.g., American Fact Finder, SkyTRENDS) to track zip codes in a franchise.

Moreover, to reduce the number of disputes arising from identifying pertinent zip codes, the FCC should permit operators to provide LFAs a list of zip codes that the operator believes to cover the franchise area, in whole or in part. LFAs should be able to object within 20 days to any zip code that it believes does not relate to the operator's franchise area, provided they provide supporting evidence. Failure to object should create a binding presumption that the operator's zip code list is correct.[84]

As to local exchange carrier ("LEC") effective competition showings, the FCC should conclude that, once the LEC has a franchise with a buildout requirement and commences operation, the number of homes passed is irrelevant. It also should confirm that the LEC test applies if the competing MVPD or any affiliated entity offers local exchange service in any community, even if not the community where effective competition determination is sought.

In addition, grant of effective competition petitions should proceed quickly. After all, if LFAs do not object, there is no reason for operators to remain subject to regulation. Thus, the Commission should automatically grant unopposed effective competition petitions once the time for filing oppositions has elapsed.

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demonstrate which MVPD is the largest. The FCC should clarify that operators other than the "largest" MVPD can still make an effective competition showing, even if one or more of the competing MVPDs may be larger than the operator seeking relief.

84 An operator could proceed with its list of zip codes, even in the face of an LFA's objection, in its FCC effective competition filing. But the operator would be required to defend the validity of its list before the FCC.

Finally, even when a petition has been opposed, the Commission should adopt a time limit for review and resolution of the petition. The FCC declined to set a time limit for itself at the outset of regulation, given the new, uncertain assignment it faced.

Must carry complaints must be resolved within 120 days.[85] CPS tier complaints had a 90 day deadline for resolution.[86] The FCC should adopt a similar time limit here, especially since the Commission now has years of experience in reviewing these petitions.

XIV. PROCEDURES FOR FCC REVIEW OF LOCAL RATE DECISIONS

FCC rules provide an important check on LFA basic rate review. Operators may file appeals at the FCC of LFA decisions. Over the last decade, the FCC has decided numerous appeals that have set the ground rules for basic rate regulation.

There is no reason to upset this balanced approach. The need routinely to take appeals to the FCC may have diminished as LFAs have become more familiar with the FCC's rules and as the FCC has clarified unforeseen ambiguities in the basic rate process. But the ability to appeal remains as important today as it was at rate regulation's inception.

The Commission in its initial rate rules established a deferential standard to LFAs in reviewing their basic rate decisions.[87] We therefore respectfully disagree with the suggestion that the FCC should increase the "deference already given to these local rate decisions… so that the Commission would intervene only when there were significant deviations from the

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[85] 47 U.S.C. §534(d)(3).

[86] 47 U.S.C. §543(c)(3).

[87] 1992 Act Report and Order, 8 FCC Rcd. at 5731 ("We also believe that the Commission should not conduct de novo review of local rate decisions and that the standard of review should be to determine whether there is a reasonable basis for the franchising authority's written decision. Since the Commission is in effect acting like an appellate court in such instances, it is appropriate to use the same standard of review – that is, the Commission will defer to the judgment of the local franchising authority provided that there is a rational basis for the decision.")

established rules…."[88] The Commission, not LFAs, is the expert agency, having established the basic rate regulation regime. The Cable Act charges the FCC with establishing procedures for resolving disputes between operators and LFAs concerning those regulations.[89] The existing appeal procedure has accomplished what Congress intended – providing operators an avenue for the redress of disputes concerning basic tier and equipment rates. Turning away from any role in all but the most egregious violations would appear to incorrectly abdicate the oversight Congress intended the FCC to exercise to resolve disputes.

National uniformity in the application of the rate rules is still as relevant today as it was when the FCC first adopted its regulations. Increased deference to LFAs would unfairly place operators in the position of having to tailor rate justifications for each LFA's particular interpretation of the rules. This would seriously undermine Congress' intent in charging the FCC with responsibility for establishing the ground rules for basic rate regulation.

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[88] Notice at ¶54.

[89] 47 U.S.C. §523(5)(B).

CONCLUSION

Cable operators – alone among MVPD competitors – remain subject to basic rate regulation in thousands of U.S. communities. The Notice provides an opportunity to simplify some of these processes. But in many respects, the industry, FCC and LFAs have learned to live with the existing rate rules. Wholesale changes to those rules are unnecessary and counterproductive. Streamlining and liberalizing the existing rules should be the goal.

Respectfully submitted,

/s/

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